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FOREIGN SERVICE DESPATCH

REVIEWED BY February 3/19/82

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AMEMBASSY, TOKYO

TO THE DEPARTMENT OF STATE, WASHINGTON.

DATE February 25, 1957

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SUBJECT: Inquiry Regarding Intent and Force of Sections 3 and 5 of Article XI of the Treaty of Friendship, Commerce and Navigation with Japan

The Embassy has received an inquiry regarding the above referenced sections of the Treaty.

Article VI section (1) of the convention between the United States and the United Kingdom for the avoidance of double taxation stipulates that "the rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to the United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 per cent:..."

The Tokyo attorney who made the inquiry has a client who was formerly a resident of the United Kingdom and enjoyed the benefits of the above cited Article. Now this person is residing in Japan, and presumably would no longer be considered to be a resident of the United Kingdom within the meaning of that term in the above cited Article. His dividends received from U. S. corporations would be subject to withholding at a rate of 30 per cent. Having previously enjoyed the 15 per cent rate, the taxpayer has raised the question through his attorney whether residents of Japan are not entitled to treatment equal to that accorded residents of the United Kingdom by virtue of section 3 of Article XI of the Treaty of Friendship, Commerce and Navigation. This section appears to accord most favored nation treatment to nationals and companies of either party. The individual in question is a British, and not a Japanese national, and though resident in Japan retains his British domicile. On the other hand, it is recognized that section 5 seems to stipulate certain special treatment for tax advantages on the basis of reciprocity. The question therefore is whether or not the most favored nation treatment provided for under section 3 of Article XI is applicable to tax matters by virtue of the reservation contained in section 5.

In order to reply authoritatively to the inquiry which it has received, the Embassy would appreciate advice from the Department as to the appropriate interpretation of the cited sections of the Treaty of Friendship, Commerce and

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Navigation as they apply to the facts outlined above. It would be appreciated if the reply would also cover the case of a Japanese national even though the present inquiry is on behalf of a resident of Japan who is not a Japanese national, if this difference is material in this situation.

For the Ambassador:

Arthur F. Blaser Jr.

Arthur F. Blaser, Jr.
Financial Attache